January 28, 2000

Mr. Thomas F. Keever
Assistant District Attorney
County of Denton
P.O. Box 2850
Denton, Texas 76202

OR2000-0303

Dear Mr. Keever:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 131715.

Denton County Judge Kirk Wilson (the "county judge") received a series of written requests for access to all memoranda, letters, reports, directives, e-mail, telephone message slips, or other writings, pertaining to twenty-one listed subjects, that were either produced or received by the county judge or his staff on November 8, 1999. The same requestor has submitted this same open records request to the county judge on a daily basis. *See generally* Attorney General Opinion JM-48 at 2 (1983) (governmental body not required to comply with standing request for information to be collected or prepared in future); Open Records Decision Nos. 452 at 3 (1986) (open records request applies only to information in existence at time request is received), 362 at 2 (1983) (governmental body not required to supply information not in its possession). You claim that the information is excepted from disclosure for numerous reasons. First, you claim that the office of the Denton County Judge is not a governmental body as defined by section 552.003(1) of the Government Code. Second, you claim that the office of the Denton County Judge is a judicial office which is not subject to the Public Information Act (the "Act") under section 552.0035. Third, you claim that the request is "an overbroad, generalized inquiry which does not identify specific information or documents as required by the Act." Finally, you claim that the information is excepted from disclosure under sections 552.101, 552.103, 552.107 and 552.111 of the Government Code. We have considered your arguments and the exceptions you claim and reviewed the submitted information.

You argue that the office of the county judge is not subject to the Act (1) because it is not a "governmental body," as defined by section 552.003(1)(A) of the Government Code, and (2) because it is a judicial office, and under the Act, "'governmental body' . . . does not include the judiciary." Gov't Code § 552.003(1)(B). This office addressed substantially the same contention in Open Records Decision No. 204 (1978). This office noted that, under the former Act, the definition of "governmental body" encompassed both "'the commissioners court of each county'" and "'the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds[.]'" ORD 204 at 1 (quoting V.T.C.S. art. 6252-17a, § (2)(1)(B), (F)). We also acknowledged that, under the Act, "'the Judiciary [was] not included within [the definition of governmental body].'" *Id.* (quoting V.T.C.S. art. 6252-17a, § (2)(1)(G)). We pointed out, however, that "[t]he county judge is judge of the county court, and also is presiding officer of the commissioners court," *id.*, and as such "'is not a judicial officer only.'" *Id.* at 2 (quoting *Clark v. Finley*, 54 S.W. 343 (Tex. 1899)). Based on these considerations, we concluded that each component of the commissioners court, including the county judge, is subject to the Public Information Act. Further, we held that information held by the county judge is subject to the Act except to the extent it pertains to cases and proceedings before the county court. This construction of the Act is consistent with both the requirement that it be liberally construed in favor of granting any request for information and the exclusion of the judiciary from the Act. ORD 204 at 2.

Since the issuance of Open Records Decision No. 204, there has been no fundamental change in either the constitutional responsibilities of a county judge or the operative language of the Public Information Act.[1] *See* Tex. Const. Art. V, §§ 15,16, 17, 18; Gov't Code §§ 552.001, 552.003(1)(A)(ii), (x) and (B); *see also Benavides v. Lee*, 665 S.W.2d 151, 152 (Tex. App.--San Antonio 1983, no writ) ("The intent of the Public Information Act must not be circumvented by an unnecessarily broad reading of the judiciary exclusion.")[2] Accordingly, we conclude that, to the extent that the requestor seeks information that does not pertain to cases and proceedings before the constitutional county court, the office of the

---

[1]The Public Information Act was codified as chapter 552 of the Government Code, and the former article 6252-17a of Vernon's Texas Civil Statutes was repealed by the Seventy-third Legislature. The codification of the former Act was a non-substantive revision. *See* Act of May 4, 1993, 73rd Leg., R.S., ch. 268, § 47, 1993 Tex. Gen. Laws 583, 986.

[2]For other instances in which this office has construed the judiciary exception to the Public Information Act and its predecessor statute, *see* Open Records Decision Nos. 646 (1996) (notwithstanding involvement of district judges in its administration, community supervision and corrections department is governmental body and not part of judiciary), 572 (1990) (Bexar County Personal Bond Office is governmental body and not within judiciary exception), 527 (1989) (same for Court Reporters Certification Board). In *Benavides v. Lee*, the Court of Appeals held the Webb County Juvenile Board to be subject to the Act, even though the board members included members of the judiciary and the county judge. *See Benavides*, 665 S.W.2d at 151-52.

County Judge of Denton County is subject to the requirements of chapter 552 of the Government Code.

You also contend that the Act does not require a governmental body to provide access to information requested on such a broad, generalized basis. Rather, citing section 552.222 of the Government Code as authority, you contend that the requestor should be required to narrow the scope of his request to specify the type of correspondence sought or the specific subject matter of the requested correspondence.

It is well-established that a governmental body may not disregard a request for records made pursuant to the Act merely because a requestor does not specify the exact documents desired. A governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision Nos. 561 at 8-9 (1990), 87 (1975). Section 552.222(b), however, provides that if a governmental body is unable to determine the nature of the records being sought, it may ask the requestor to clarify the request so that the desired records may be identified.

However, section 552.222(b) does not stand for the proposition that a request may be denied merely because it seeks a broad range of documents. The purpose of this section is to authorize a dialogue between the governmental body and the requestor regarding the scope of the records request.[3] ORD 663 at 5(1999). When a requestor makes a vague or broad request, the governmental body should make a good faith effort to advise the requestor of the type of documents available so that the requestor may narrow or clarify the request. *See id.* at 5.

We have reviewed the open records requests submitted to the county judge. Each request specifies the physical or other form of the information, the subject matter of the information, and the time frame for the creation or receipt of the requested information. The requestor states that, with certain limitations, he wants access to each document produced or received by the county judge and his office regarding certain matters during the time interval specified in each request.[4] The requests, while encompassing numerous facets of county business, are sufficiently clear and understandable to inform the county judge of the records being requested, as is evidenced by your ability to identify records responsive to each of the individual requests. Given the mandate found in section 552.001 that the provisions of the

---

[3]Section 552.222(b) also limits the nature of the inquiries by the governmental body to those regarding the requested documents themselves. This section prohibits the governmental body from inquiring into the purpose for which the requestor seeks the records.

[4]The requestor has excluded from the scope of his request "mass mailings or pre-printed materials intended for wide distribution . . . [and] personal e-mails between co-workers not concerning the transaction of official Denton County business."

Public Information Act be liberally construed to effect this end, we conclude that the records requests are valid. Consequently, the county judge must release all documents for which you have raised no exception to disclosure.

In light of our resolution of your threshold arguments, we also consider your claims under sections 552.101, 552.103, 552.107 and 552.111 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Based upon the arguments and documents you submitted, we conclude that you have not established the applicability of section 552.101 to the submitted information. Nor does the information appear on its face to be subject to section 552.101. Therefore, you may not withhold the information from the requestor based upon section 552.101.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. In the instant case, you claim that Exhibits C and E are excepted from disclosure under section 552.103 as documents relating to pending litigation in which Denton County is a party.[5] Exhibit C consists of correspondence and court filings served by a private attorney representing Denton County to opposing counsel. We find that because both parties in the litigation have had access to these documents, Exhibit C is not excepted under section 552.103(a) and must be released. Exhibit E, however, does fall within the litigation exception of section 552.103(a) and may therefore be withheld from disclosure. We also note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

---

[5]In you brief, you argue that Exhibit E is "excepted under the litigation exception of Section 552.107." There is no litigation exception in section 552.107. We assume you are referring to the litigation exception of section 552.103.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. ORD 574 at 5. Section 552.107(1) does not except purely factual information from disclosure, nor does it protect information gathered by an attorney as a fact-finder. Open Records Decision Nos. 574 (1990), 559 (1990), 462 (1987). Section 552.107(1) does not except from disclosure factual recounting of events or the documentation of calls made, meetings attended, and memoranda sent. ORD 574 at 5. You assert that Exhibit D is excepted from disclosure as an attorney-client privileged document protected under section 552.107. We agree that this document constitutes legal advice and opinion given by an attorney to her client, the Denton County Commissioners Court. Therefore, Exhibit D may be withheld from public disclosure. Because sections 552.103 and 552.107 are dispositive, we do not address your other claimed exception.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A Crawford

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/nc

Ref: ID# 131715

Encl. Submitted documents

cc: Charles Siderius
Denton Record-Chronicle
P.O. Box 369
Denton, Texas 76201-
(w/o enclosures)